

- (3) Who investigates request;
- (4) Who approves or disapproves requests;
- (5) Notice that the inmate may appeal to the superintendent any decision not made by the superintendent;
- (6) Notice that all decisions shall be in writing, shall state the underlying facts and shall be based on reasons consistent with s. HSS 309.45;
- (7) Time limits for decisions; and
- (8) Notice to the inmate that, if the recipient of funds is receiving government aid, the recipient may have a duty to report receipt of the inmate's funds.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

**HSS 309.49 Disbursement of general account funds.** (1) General account funds, in excess of the amount specified for canteen, under s. HSS 309.52 (1) (b), shall be disbursed by the institution business manager under sub. (3). All disbursements shall be consistent with the purposes under s. HSS 309.45.

(2) Inmates may request to have general account funds disbursed for any reason. The procedure for processing inmate requests is required to be written under s. HSS 309.48.

(3) Requests for disbursement in excess of \$25 to more than one close family member and to other persons under sub. (4) (a) may be made only with written permission of the superintendent or designee. All other disbursements are approved or disapproved by the person designated by the institution under s. HSS 309.48 (4).

(4) The objectives of s. HSS 309.45 may be fulfilled by disbursements of general account funds in excess of the canteen limit including, but not limited to, the following:

(a) To any source not including sources under par. (b), (c), (d), or (f) only with written permission from the superintendent under sub. (3).

(b) Twenty-five dollars or less to the inmate's one close family member once every 30 days. Such disbursements do not require approval by the superintendent.

(c) To deposit in an interest bearing account established in the inmate's name at a bank designated by the division. All interest shall accrue to the inmate. Such disbursements do not require approval by the superintendent.

(d) To purchase United States savings bonds. Bonds purchased for others are subject to the limitations under par. (b). Bonds purchased shall be retained by the institution business manager until redeemed or until the inmate's release. Any redemption money shall be returned to the general account. Such disbursements do not require approval by the superintendent.

(e) To pay creditors' claims acknowledged in writing by the inmate and claims reduced to judgment. Such disbursements require approval by the superintendent. If necessary, the claims may be verified.

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(f) To pay costs of temporary release under ch. HSS 325 and leave for qualified inmates under ch. HSS 326. Such disbursements do not require approval by the superintendent.

(5) Before releasing an inmate to field supervision, the releasing institution shall inform the parole agent of the balances in the inmate's general account, release account under s. HSS 309.466 and segregated account, if any, under s. HSS 309.50. The agent shall instruct the institution business manager as to where these balances shall be transferred. Following release, the former inmate may use funds formerly held in his or her institution accounts only with the approval of the agent. When the client is discharged from field supervision, any remaining funds from these accounts shall be paid to the client.

(6) Inmates may not open charge accounts or possess charge cards.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; emerg. r. (5), eff. 5-15-86; r. and recr. (5), September, 1986, No. 369, eff. 10-1-86.

**HSS 309.495 Transportation for inmates upon release.** The division shall arrange for the transportation of an inmate released from an institution to the inmate's release placement location in the state, or shall give the inmate the means to procure transportation to that location.

History: Emerg. cr. eff. 5-15-86; cr. Register, September, 1986, No. 369, eff. 10-1-86.

**HSS 309.50 Segregated account funds.** (1) Funds received for inmates on work or study release shall be credited to a segregated account.

(2) Collection and disbursement of funds received under sub. (1) shall be governed under ch. HSS 324.

(3) Funds received by inmates for enrollment in programs within the institution and funded by the institution shall be placed in a segregated account. Inmates shall be required to pay the costs of tuition and books from these funds. If an inmate refuses to do so, it may be grounds for removal from a program.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81.

**HSS 309.51 Funds for legal correspondence and copying.** (1) Correspondence to courts, attorneys, parties in litigation, the inmate complaint review system under ch. HSS 310 or the parole board may not be denied due to lack of funds, except as limited in this subsection. Inmates without sufficient funds in their general account to pay for paper, photocopy work, or postage may receive a loan from the institution where they reside. No inmate may receive more than \$200 annually under this subsection, except that any amount of the debt the inmate repays during the year may be advanced to the inmate again without counting against the \$200 loan limit. The \$200 loan limit may be exceeded with the superintendent's approval if the inmate demonstrates an extraordinary need, such as a court order requiring submission of specified documents. The institution shall charge any amount advanced under this subsection to the inmate's general account for future repayment. An inmate may be permitted to retain in the inmate's general account an amount of money specified, in writing, by the bureau of adult institutions that is not subject to repayment of the loan.

(2) The costs to inmates of engaging in correspondence described in sub. (1) may not exceed the following:

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- (a) Fifteen cents per page of photocopy; and
- (b) Two cents per sheet of paper.

History: Cr. Register, October, 1981, No. 310, eff. 11-1-81; am. (1), r. and recr. (2), Register, December, 1989, No. 408, eff. 1-1-90.

**HSS 309.52 Canteen.** (1) (a) Each institution shall maintain a canteen accessible directly or indirectly to inmates to facilitate purchase of property approved under s. HSS 309.35. Institution staff may consult with the inmate population in selecting canteen stock.

(b) The bureau of adult institutions shall establish, in writing, a maximum allowable amount of money that may be spent during a specified

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Note: HSS 309.40. The division must ensure that adequate and appropriate clothing is provided to inmates. Inmates must maintain it and keep it clean and neat. The sizes of institutions and living units, the amount of storage space, the type of programs available, laundry resources, and differing security requirements dictate that each institution have its own policies relating to personal clothing. In camps, where inmates often have contact with the community, it is desirable to permit the wearing of personal clothing.

Note: HSS 309.45. The objectives of HSS 309.45-309.52 are to meet the security needs of the institution, encourage responsible money management on the part of the inmate, preserve money for the inmate's use upon release, and to enable the inmate to make purchases while in the institution. These broad objectives may sometimes seem inconsistent. Management of funds in a way that meets all the objectives is difficult. If there is a conflict, the requirement in HSS 309.48 (6) that reasons be given for decisions is important.

The differences among inmate needs and obligations explain why the objectives are broad. Family needs and, therefore, the demand on an inmate's funds vary from person to person. For example, one inmate may have a spouse with no income and several children. They may be receiving aid for dependent children. Another inmate may be single, have no family obligations, and receive money from home. The management of funds in these two cases must be in accordance with the needs of the family and the inmate.

The objectives set forth in this section are factors to consider in weighing the different demands on and amount of inmate funds. The objectives for management of these funds are not listed in priority order, and one should not be given undue emphasis over the other. Rather, they should all be considered in light of the specific circumstances surrounding each inmate's financial position.

Note: HSS 309.46. This section implements s. 46.07 (1), Stats., relating to the deposit of money. There is no statutory authority to regulate all money that an inmate controls. For example, a savings account in existence before incarceration is not within the scope of HSS 309.45-309.52.

In an institutional setting it is desirable to have all money kept in an account for the benefit of the inmate, rather than to allow inmates to carry money. This eliminates problems with exchange of contraband and victimization that could result if the inmates carried money. While these problems may be present without money, this section prevents use of money as a means of illegal exchange.

Note: HSS 309.465. HSS 309.465 implements the crime victim and witness assistance surcharge established by s. 973.045, Stats. The statute requires that if an inmate in a state prison has not paid the surcharge, the department is required to assess and collect the amount owed from the inmate's wages or other moneys and transmit the amount collected to the state treasurer.

Note: HSS 309.466. HSS 309.466 requires the division to establish a release account for each inmate. It recognizes that a release account will promote inmate savings and ensure that inmates have funds available upon release to help with their transition back into society pursuant to HSS 309.45 (1). The deduction will come out of all inmate funds coming into the institution or earned by the inmate at the institution, including hobby income and inmate wages, except income from work release and funds received for study release, but will not start until the crime victim and witness surcharge is paid in full. The specific percentage of the deduction and the total amount that may be deducted will be determined by internal management procedures of the division. The release fund is untouchable for any purpose until release from prison except that when a release date is established an inmate may ask that funds be disbursed to pay for release clothing and arrange for out-of-state transportation. Following release, disbursements are monitored by the inmate's parole agent. Funds will be needed upon release to pay for housing, security deposits, food and transportation until employment is found, especially since allowances for gate money and release clothing are eliminated effective July 1, 1986.

Note: HSS 309.47. This section requires the division to give the inmate a receipt of all transactions in his or her account. This is good accounting practice. It is in accord with ACA, standard 4368.

The requirement that the inmate receive a periodic statement from a savings account serves 2 important objectives: (1) provides notification to the inmate of the current state of the account and (2) provides an accounting check on possible mistakes. For example, if a sum were wrongly credited, it may be noticed by the inmate who could notify the institution business manager to correct the error.

Note: HSS 309.48. HSS 309.48 requires each institution to write its procedure pertaining to inmate requests for disbursement of funds. The written procedure must contain all the information under sub. (1)-(8) and be otherwise consistent with HSS 309.45-309.52. The proce-

duration for submitting requests and approval is not necessarily the same for all institutions. This section outlines common information each institutional procedure must contain.

Note: HSS 309.49. HSS 309.49 governs the use of general account funds. Subsection (1) acknowledges the institution business manager's discretion to allow or forbid spending of inmate funds for any reason that is consistent with meeting the objectives of HSS 309.45.

Subsection (2) recognizes that an inmate can request to have funds spent for any reason. Obviously the request should be for something consistent with the purpose of HSS 309.45 or the appropriate authority will not approve the expenditure. For example, if an inmate has less than \$500 in an institution controlled account, that inmate will have less latitude to spend freely unless some other purpose under HSS 309.45 is considered to be overriding in the discretion of the superintendent.

Subsection (4) specifies some uses of funds, in excess of the canteen limit, that may be consistent with HSS 309.45. This is intended as a guideline. Again, as discussed in the note to HSS 309.45, whether an expenditure is consistent with the objectives of that section depends upon the financial situation of the individual inmate making the request.

Disbursements in excess of \$25 to one close family member or to persons other than close family members require written permission of the superintendent. This subsection was adopted to eliminate illegal activities. It should not be used as a bar to disbursements in excess of \$25 to one close family member, for example, if it can be established that the money is to be used for a lawful purpose. Subsection (4) (b) recognizes that disbursement of \$25 or less to a close family member of the inmate once every 30 days may be desirable. This kind of disbursement relates to the objective in HSS 309.45 (3) concerning the development of a sense of responsibility on the part of inmates for payment of family obligations. The definition of close family member is contained in HSS 309.02 (2).

Sub. (4) (c) and (d) specify that the inmate may deposit money in an interest bearing account or purchase U.S. savings bonds. This is desirable as a means of meeting the objectives of HSS 309.45 (1) and (4). ACA, standard 4370 considers the provision for accrual of interest to the inmate to be an essential element of any written policy on inmate funds.

Subsection (4) (e) relates to the objective of HSS 309.45 (3) regarding the payment of an inmate's debts.

Note: HSS 309.50. The segregated account is used primarily for administration of the funds handled by the work and study release programs. The handling of these funds is governed under ch. HSS 324.

Subsection (3) requires funds received by inmates from outside sources due to enrollment in institution programs and funded by institution funds to be deposited in a segregated account. These funds are to be used for tuition and books. Although these programs are made available to all inmates, regardless of ability to pay, inmates who receive funds should be required to use the money to help pay for the costs of education. Past division policy was to prohibit using these funds for tuition and books. Examples of the sources of such funds are veterans administration, social security, and railroad retirement funds.

The underlying concern under the old policy was that it was unfair to require those inmates who receive money from outside sources to pay for tuition and books when these costs would be paid from institution funds for inmates who received no outside money. The division has the responsibility to provide these kinds of educational programs regardless of ability to pay.

The present policy reflects the view that, when inmates receive outside money by virtue of their enrollment in an institutional educational program, that money should be used to pay for the costs of that program. This policy frees resources to help the division better fulfill its responsibility to provide educational programs.

Note: HSS 309.51. This section authorizes loans to inmates for expenses related to legal correspondence. The funds are not intended for actual legal services but to pay for postage, paper and photocopying.

The department recognizes that inmates have a right of access to the legal system regardless of financial status. For a discussion of the importance of the legal process to people in correctional institutions, see HSS 309.25 and note. However, the right of access to the courts is not unconditional. Rather, inmates have the right of *meaningful* access to the courts. *Campbell v. Miller*, 787 F.2d 217 (7th Cir. 1986). Therefore, inmates do not have a right to an unlimited number of free photocopies, even for legal purposes. *Harrell v. Keohane*, 621 F.2d 1059, 1061 (10th Cir. 1980) (per curiam); *Kendrick v. Bland*, 585 F. Supp. 1536, 1553 (W.D.Ky. 1984). See also, *Gibson v. McEvers*, 631 F.2d 95, 98 (7th Cir. 1980) and *Guinea v. Lane*, 790 F.2d 1299 (7th Cir. 1986).

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Note: HSS 309.52. Canteen expenditures are consistent with the purposes of HSS 309.45 since they allow the inmate to manage funds for personal needs. HSS 309.35 governs the approval of personal property. Approved property for personal needs, for example, shaving, dental hygiene, or tobacco, may be purchased by inmates from the canteen up to the canteen limit established by the bureau of institutions. Subsection (1) (b) was written to permit flexibility in setting the maximum limit on property that may be purchased at the canteen. It should be adjusted to reflect current economic conditions.

Subsection (1) (d) requires the institutions to permit the purchase of approved personal property not carried in the canteen. The procedures developed must allow a reasonable selection. Therefore, purchases should not be limited to a small number of businesses. Allowing inmates to choose from a large number of businesses encourages inmates to compare prices, and this is important in developing responsible money management habits.

Subsection (2) is consistent with the objective of HSS 309.45 (2) since it prohibits use of money as the means of exchange at the canteen. An identification and bookkeeping procedure to ensure the proper account is charged when a purchase is made reduces the possibility of problems with victimization or exchange of contraband, which are addressed in the note to HSS 309.48.

Note: HSS 309.55. Subsection (4) (e) 1 provides for compensation for inmates who were receiving pay before placement in voluntary confinement and requested placement in voluntary confinement upon the recommendation or approval of the security director for the purpose of ensuring the inmates' safety. These inmates receive the minimum pay under sub. (7) (a) while in voluntary confinement. Subsection (4) (e) 2 and 3 provides for compensation for inmates who are in administrative confinement or observation either because they were receiving pay prior to this placement or because they are able to participate in approved work or program assignments while under administrative confinement or observation. Payment of compensation to inmates in administrative confinement and observation is appropriate because these are nonpunitive statuses and it is important to encourage participation in work and program assignments when that participation is consistent with the inmate's status and behavior.

Subsection (5) requires each institution to rank its work assignments according to the degree of skill and responsibility demanded by each. This ranking should be uniform within an institution to ensure fair treatment of all inmates. However, the subsection does allow for paying inmates in comparable assignments at different rates if their performances differ (sub. (5) (e)).

Each institution may determine the number of positions assigned to each pay range as long as the institution does not exceed its total allocation of work assignment funds. Table 309.55 indicates how the total amount of work assignment funds will be allocated to each institution. The table does not limit the number of positions an institution may have in each pay range.

In addition to the compensation provided under sub. (7) (b) for inmates with injuries sustained in job-related accidents, s. 56.21, Stats., provides for further compensation at the time of parole or final discharge to inmates who have become permanently incapacitated or have materially reduced earning power as a result of the injury, as determined by the Department of Industry, Labor and Human Relations.

The statuses in sub. (8) are short-term, temporary in nature, usually pending further investigation or examination after which the inmate may return to the former assignment. The inmate should not lose pay during this period.

Subsection (9) is derived from the security rules, ch. HSS 306.

Note: HSS 309.56. Telephone calls are a desirable means for inmates to maintain meaningful contacts with persons outside correctional facilities. Although calls are desirable, the number must be limited due to the lack of resources available. But, subs. (1) and (3) make it clear that allowing more than one call per month is encouraged as sound correctional policy.

Subsections (2) and (3) require the division of corrections to permit at least one telephone call per month to someone on the approved visiting list, close family members, and others. Each institution is encouraged to allow more calls, but it is not required because some institutions do not have resources to accommodate larger numbers of calls. This reasoning also applies to the six-minute time limit under sub. (5).

Subsection (4) requires long distance calls to be collect unless payment from the inmate's account is approved. Allowing the inmate to pay for his or her own calls was left to the discretion of each institution because all institutions do not allow it.

The resource problems associated with telephone calls in a correctional setting are numerous. Inmates must be supervised to some extent by staff while they are making calls and while they are being moved to an area where the calls are made. The large number of inmates in high

security institutions requires a substantial commitment just to permit each inmate to make one telephone call each month. Inmates in institutions with lower security may not need close supervision, but these institutions also do not have the same level of staff.

The policy on telephone calls, HSS 309.56 to 309.60, substantially conforms to the American Correctional Association's, *Manual of Standards for Adult Correctional Institutions* (1977) (hereinafter "ACA"), standard 4349.

Note: HSS 309.57. A telephone call to an attorney can be necessary if the mail is inadequate and an inmate must contact an attorney with reference to a case. Telephone contact with attorneys furthers access to the judicial process, legal services, and legal materials, and access to the legal process is guaranteed by the U.S. Constitution. HSS 309.25 and the note following that section contain a discussion of the benefits of such a policy. The policy of effective access is articulated in *Bounds v. Smith*, 430 U.S. 817 (1977), and HSS 309.25—309.29.

Several commentators have supported a policy that assists inmates in making confidential contact with attorneys via the telephone. See ACA, standard 4282; National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (1973), standard 2.2; Krantz, et al., *Model Rules and Regulations on Prisoners' Rights and Responsibilities* (1973), rule 1C-5; and American Bar Association's *Tentative Draft of Standards Relating to the Legal Status of Prisoners* (1977), part VI, standard 6.1 (c).

The requirement that calls be made with permission of appropriate staff recognizes that some formal arrangements may be necessary for security or other reasons before an inmate has access to a telephone and it may take time for such arrangements to be made. Unnecessary telephone calls may thus be prevented. Although an inmate may call an attorney only with permission of staff, that permission may not be unreasonably withheld if a need exists under sub. (4).

A more difficult problem is created if attorneys indicate to institutional staff that they do not wish to receive calls from particular inmates or if they repeatedly refuse to accept calls. Staff want to permit inmates access to the legal process, yet must respect the wishes of lawyers who do not want to be contacted by telephone.

Staff must exercise sound judgment in such situations. Frequently, the best course to follow is to have the inmate contact one of the legal service programs that serves inmates. This enables the inmate to talk to a lawyer who either can be of direct help or who can bring about contact with another lawyer.

Note: HSS 309.58. Subsection (1) requires that staff ask for messages from incoming callers and that the messages be delivered to the inmate. Reaching inmates for each incoming call would be impracticable. The policy under sub. (1) permits staff to plan for inmate telephone calls. This preserves order and fosters more efficient use of staff time.

If an inmate is easily accessible, staff may allow an inmate to answer the call. An inmate might be allowed to take an incoming call in an emergency.

Subsection (2) permits an inmate to make emergency telephone calls regardless of the number of calls the inmate has already made that month or the inmate's institution status. Serious illness or death in the family are recognized as bases for granting leave under ch. HSS 326 and temporary release under ch. HSS 326. However, there may be other reasons for emergency telephone calls so the rule is not limited to those situations.

Note: HSS 309.59. Permitting telephone calls between spouses and parents and children committed to Wisconsin correctional or mental health institutions fosters the correctional goal of maintenance of family ties. However, such calls involve two institutions and, thus may require additional arrangements to ensure security at both institutions. Therefore, a separate rule was adopted specifying that the prior arrangements be made.

Note: HSS 309.60. Subsection (1) requires each institution to establish written procedures for telephone calls. Since each institution has unique physical structure, resources, security concerns, and staffing patterns, separate procedures are needed. In some minimum security institutions, for example, the superintendent may establish a policy which allows more liberal use of the telephone by inmates. In all cases, however, those procedures must incorporate the policy established in this chapter.

Subsection (2) allows the superintendent to grant permission for an inmate to place a telephone call regardless of any other limitation in this chapter. This is consistent with the policy of HSS 309.56 (1) because the superintendent may find that communication by a telephone call is necessary and desirable even when other provisions of this chapter would prohibit it.

Note: HSS 309.61. HSS 309.61 prohibits discrimination against an inmate based on the inmate's religious beliefs, but regulates an inmate's ability to practice his or her religion. Inmates do not lose their constitutional right under the first amendment to hold whatever religious Register, December, 1989, No. 408



ligious beliefs they wish or to hold no religious beliefs. See *U.S. v. Reynolds*, 98 U.S. 145 (1878). However, the extent to which an inmate may practice his or her religion may be curtailed in a correctional setting because consideration must be given in these settings to security, order and fiscal limitations. Although the beliefs of each inmate must be respected, it would be impossible to provide a regular service or ritual for every denomination or sect represented in the general population. The limits on religious practice included in the section are consistent with ACA, Standards for Adult Correctional Institutions, standard 2-4468 (2d ed. 1985) (hereinafter ACA) and the Proposed Standards of the American Bar Association's Joint Committee on the Legal Status of Prisoners amended and approved by the American Bar Association's House of Delegates (1981), standard 6.5 (b) (hereinafter ABA).

Subsection (1) (c) establishes that in addition to an inmate's right to hold religious beliefs, an inmate has the right to be free from pressure to participate in religious practices. Records concerning inmate religious preferences may be kept only for administrative purposes such as issuance of passes to participate in religious activities, dietary restrictions or approval of special religious visits. See ABA standard 6.5 (d) and (e).

Subsection (2) describes the procedure for requesting permission to participate in religious practices. The superintendent must make an initial determination that the request is based upon a religious belief and is not a subterfuge for obtaining special privileges. The superintendent should consult with the chaplain or designated staff person with appropriate religious training prior to making his or her determination. A test for what constitutes a religion is difficult to devise. The listed considerations and prohibited concerns are taken from the National Advisory Commission on Criminal Justice Standards and Goals, Corrections Standard 2.6 (6) (1973) and ACA standard 2-4468. If the superintendent determines the request has a religious basis, he or she must determine whether to allow the practice. Inmates should be granted permission to pursue religious practices which do not threaten security or order and do not unreasonably burden the institution.

Subsection (4) describes the alternatives that institutions may employ to meet the religious needs of inmates. A chaplain or designated staff person with appropriate training should coordinate religious services and community resources. It is the responsibility of the institution's chaplain or designated staff person to identify the religious needs of the institution's inmate population and to recommend to the superintendent the most appropriate means to meet those needs. The chaplain or designated staff person should have a positive regard for the contributions that all religions make to the inmates involved with them. Due to the changing preferences and diversity of religious beliefs in correctional institutions, resources from outside the institution can fulfill a need in the delivery of religious services. The chaplain or designated staff person should attempt to develop volunteer services. However, if necessary to supplement the volunteer services, institutions may pay religious providers from outside the institution. See ACA standards 2-4463 and 2-4471. The chaplain or designated staff person should be responsible for the recruitment, selection, training and supervision of volunteers providing religious services. He or she should make recommendations to the superintendent concerning scheduling of religious activities, allocation of resources and propriety of requested religious activities.

Subsection (5) states the standard by which religious literature may be withheld from inmates. The standard is consistent with ABA standards 6.1 (b) and (c).

Subsection (6) establishes special protections for religious symbols and attire. See ABA standard 6.5 (f).

Subsection (7) allows for the special religious diets required by many religious groups. Within the constraints of budget and security, inmates should be provided with a diet sufficient to sustain them in good health without violating religious dietary laws. See ABA standard 6.5 (c).